

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #7	CCRB Case #: 201702384	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/17/2017 12:20 PM	Location of Incident: In front of 24-30 Union Square East	Precinct: 13	18 Mo. SOL 8/17/2018	EO SOL 8/17/2018	
Date/Time CV Reported Tue, 03/28/2017 5:23 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 03/28/2017 5:23 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. INS Brian McGinn	00000	910284	PBMS
2. SGT Lawrence Bosch	00174	933652	PBMS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Todd Craven	27626	928124	013 PCT
2. SGT Elena Stojanovski	02188	940773	013 PCT

Officer(s)	Allegation	Investigator Recommendation
A.INS Brian McGinn	Discourtesy: Inspector Brian McGinn spoke discourteously to § 87(2)(b)	
B.SGT Lawrence Bosch	Discourtesy: Sergeant Lawrence Bosch spoke discourteously to § 87(2)(b)	
C.INS Brian McGinn	Abuse: Inspector Brian McGinn authorized the summons issued to § 87(2)(b)	
D.SGT Lawrence Bosch	Abuse: Sergeant Lawrence Bosch authorized the summons issued to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the online form on March 28, 2017.

On February 17, 2017, at approximately 12:20 p.m., § 87(2)(b) was riding his bicycle north on 4th Avenue, in Manhattan. While crossing the intersection of 4th Avenue and East 14th Street, an unmarked black police SUV allegedly cut in front of § 87(2)(b) nearly hitting his bicycle. In response, § 87(2)(b) hit the police vehicle, containing Inspector Brian McGinn and Sgt. Lawrence Bosch, of Patrol Borough Manhattan South, with his hand. Inspector McGinn and Sgt. Bosch stopped § 87(2)(b) in front of 24-30 Union Square East. When § 87(2)(b) asked what he did wrong, Inspector McGinn allegedly stated, “Shut up. You know what you fucking did.” Inspector McGinn also allegedly stated to § 87(2)(b) “You’re going to fucking jail,” and, “It’s a fucking emergency vehicle. Didn’t you see our lights on?” (**Allegation A**). While he was handcuffed, § 87(2)(b) asked Sgt. Bosch what he was being held for, and Sgt. Bosch allegedly responded, “Shut the fuck up” (**Allegation B**). PO Todd Craven and Sgt. Elena Stojanovski, from the 13th Precinct, were called to the scene, and ultimately issued § 87(2)(b) summonses for disorderly conduct and failure to yield to an emergency vehicle (**Allegation C**).

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- This case was eligible for mediation, but § 87(2)(b) declined to mediate.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- As of April 26, 2017, § 87(2)(b) has not filed a Notice of Claim against the City of New York (Board Review 02).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Civilian and Subject Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 03).
- Inspector McGinn has been a member of the NYPD for 29 years. Inspector McGinn has been the subject of 12 prior allegations stemming from ten cases. There have been no substantiated allegations against Inspector McGinn, § 87(2)(g) [REDACTED]
- Sgt. Bosch has been a member of the NYPD for 13 years. Sgt. Bosch has been the subject of two prior allegations stemming from Case #201311105, in which both discourtesy and offensive language allegations were substantiated against him. According to independent witnesses in that case, Sgt. Bosch called a civilian a “faggot” and “faggot-ass.” Charges were recommended by the CCRB, resulting in an APU Trial. Sgt. Bosch was found guilty and forfeited five vacation days.

Potential Issues

- Because § 87(2)(b) filed this complaint nearly six weeks after the incident date, video footage could not be obtained for this incident.
- § 87(2)(b) alleged that, upon Inspector McGinn's and Sgt. Bosch's initial approach, an officer had stated, "What the fuck are you doing?" However, § 87(2)(b) did not see which officer allegedly made this discourteous phrase, and both Inspector McGinn and Sgt. Bosch, indisputably the only two officers present at this time, both denied making this statement. § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

- The two summonses that were ultimately issued to § 87(2)(b) for this incident were issued by PO Craven. However, PO Craven undisputedly did not witness the police-involved encounter, and, as he stated in his in-person statement, only issued § 87(2)(b) these summonses based on information he had received from Sgt. Bosch. Inspector McGinn stated in his in-person statement that he had called PO Craven to the scene to issue § 87(2)(b) a summons, and left it up to Sgt. Bosch to "work it out." Similarly, Sgt. Bosch acknowledged in his in-person statement that he instructed PO Craven to issue § 87(2)(b) a summons. § 87(2)(g)

Allegations Not Pleaded

- Abuse of Authority: § 87(2)(b) alleged that, once he was handcuffed, Sgt. Bosch entered his pockets and removed his personal belongings. Both Sgt. Bosch and Inspector McGinn testified in their in-person statements that, at the time of Sgt. Bosch's frisk and search of § 87(2)(b), § 87(2)(b) was considered under arrest for criminal mischief, only to be ultimately released upon further investigation. § 87(2)(g)
- Abuse of Authority: As further discussed below, § 87(2)(b) alleged that Inspector McGinn told him multiple times, "You're going to fucking jail." However, though § 87(2)(b) was never arrested as a result of this incident, he was ultimately issued two summonses in lieu of being arrested. § 87(2)(g)

Allegation A – Discourtesy: Inspector Brian McGinn spoke discourteously to § 87(2)(b)

Allegation B – Discourtesy: Sergeant Lawrence Bosch spoke discourteously to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) alleged that Inspector McGinn and Sgt. Bosch exited the police vehicle and approached him, with one of the officers stating, "What the fuck are you doing?" § 87(2)(b)

asked what they were referring to, and Inspector McGinn replied, “Shut up. You know what you fucking did.” After being handcuffed, § 87(2)(b) informed the officers that he was on his way to work, and Inspector McGinn replied, “Not today, you’re not. You’re going to fucking jail.” § 87(2)(b) asked why, and Inspector McGinn replied, “Criminal mischief. You’re going to fucking jail.” Inspector McGinn also told § 87(2)(b) “It’s a fucking emergency vehicle. Didn’t you see our lights on?” § 87(2)(b) while being searched by Sgt. Bosch, asked Sgt. Bosch what he was being held for, and Sgt. Bosch replied, “Shut the fuck up.” § 87(2)(b) acknowledged that all of these statements were made prior to PO Craven’s and Sgt. Stojanovski’s arrival (Board Review 04).

Inspector McGinn testified that he was “sure” his voice was raised towards § 87(2)(b) during the incident because of § 87(2)(b) banging on the police vehicle, but denied making any of the discourteous statements alleged against him and did not hear Sgt. Bosch tell § 87(2)(b) “Shut the fuck up” (Board Review 05).

Sgt. Bosch denied telling § 87(2)(b) “What the fuck are you doing,” and “Shut the fuck up.” He denied that Inspector McGinn stated to § 87(2)(b) “You know what you fucking did, and, “You’re going to fucking jail.” Sgt. Bosch noted that Inspector McGinn never raised his voice towards § 87(2)(b) (Board Review 06).

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Allegation C – Abuse of Authority: Inspector Brian McGinn authorized the summons issued to § 87(2)(b)

Allegation D – Abuse of Authority: Sergeant Lawrence Bosch authorized the summons issued to § 87(2)(b)

§ 87(2)(g)
It is undisputed that § 87(2)(b) struck the back of the police vehicle with his hand, was subsequently stopped by officers, and due to his apologetic demeanor, was not arrested but rather released with a disorderly conduct summons and a failure to yield to an emergency vehicle summons.

§ 87(2)(b) alleged that, while riding his bicycle on 4th Avenue, he was cut off by Sgt. Bosch, who was driving an unmarked SUV perpendicular to him on East 14th Street. § 87(2)(b) did not observe any emergency lights on the vehicle and believed the vehicle to be an Uber car. § 87(2)(b) smacked the back windshield of the vehicle once with his hand to let the driver know that he was there, and because he was upset. He then continued riding for approximately one block before being stopped by the officers. PO Craven and Sgt. Stojanovski were eventually called to the scene, and § 87(2)(b) heard Inspector McGinn tell PO Craven to write § 87(2)(b) a ticket for “something.” PO Craven ultimately issued § 87(2)(b) summonses for disorderly conduct and failure to yield to an emergency vehicle (Board Review 04).

Sgt. Bosch stated that he believed that the vehicle’s emergency lights were on at the time he and Inspector McGinn were stopped at the intersection and heard § 87(2)(b) smack the vehicle. He then observed § 87(2)(b) cursing and yelling at the officers while riding his bicycle but did not recall anything that he had said. At that point, § 87(2)(b) was considered to be

under arrest for criminal mischief, as there was a possibility he had damaged the police vehicle, and could have also been charged with disorderly conduct because he had struck the vehicle, was screaming, and was blocking vehicular traffic. After later observing that there was no damage to the vehicle and that § 87(2)(b) was “apologetic” for the duration of the incident, Sgt. Bosch decided to issue § 87(2)(b) a disorderly conduct summons and instructed Sgt. Stojanovski, who had arrived after the infraction, to do so. At the time of his CCRB interview, Sgt. Bosch was unaware that a summons for failing to yield to an emergency vehicle was issued to § 87(2)(b) as well (Board Review 06).

Inspector McGinn testified that the emergency lights were on at the time § 87(2)(b) struck the vehicle, and that § 87(2)(b) was considered under arrest for either criminal mischief or attempted criminal mischief after banging on the police vehicle “a few” times, which was causing public alarm. He noted that, when he turned around, he observed § 87(2)(b) cursing at the officers while peddling away, though he did not recall any specific statements that § 87(2)(b) had made. Inspector McGinn observed no damage to the officers’ vehicle, and saw how apologetic § 87(2)(b) was during the incident, so he called PO Craven and Sgt. Stojanovski to ultimately release § 87(2)(b) with a summons. Upon their arrival, Inspector McGinn told Sgt. Stojanovski what had happened, and told her and Sgt. Bosch to “work it out.” He did not relay which summonses to write, and left it up to the sergeants to decide. Inspector McGinn did not notice a crowd forming during the incident (Board Review 05).

PO Craven, who ultimately issued the summonses to § 87(2)(b) testified that he and Sgt. Stojanovski responded to the location after being directed to do so via a phone call from Sgt. Stojanovski. Upon arriving, he spoke with Sgt. Bosch, who had told him that § 87(2)(b) hit their vehicle with his hand. Sgt. Bosch instructed PO Craven to write § 87(2)(b) summonses, but did not specify which violations they should be issued for. PO Craven and Sgt. Stojanovski determined which violations were most applicable, based on the information given by Sgt. Bosch. When asked why § 87(2)(b) was given a summons for disorderly conduct, PO Craven stated, “I don’t have an answer for that,” though he defined disorderly conduct as “causing alarm,” and that § 87(2)(b) hitting the vehicle with his hand could cause unnecessary alarm. When asked why a summons for failing to yield to an emergency vehicle was issued, PO Craven defined the officers’ vehicle as an emergency vehicle and that pedestrians, vehicles, and bicyclists should yield to it while it’s moving through traffic. After Sgt. Bosch and Inspector McGinn left the location, prior to providing § 87(2)(b) with the summonses, PO Craven informed § 87(2)(b) “I’m really not sure why we are here doing this, but let me figure this out. Give me a few minutes.” PO Craven explained that, even after obtaining Sgt. Bosch and Inspector McGinn’s rendition of events, he was uncertain what, specifically, to issue § 87(2)(b) summonses for. PO Craven described § 87(2)(b) as being “very nice” and a “perfect gentleman” during the incident (Board Review 07).

§ 87(2)(b) was issued a Criminal Summons for disorderly conduct, subsection one for engaging in fighting or in violent, tumultuous, or threatening behavior, and also a Vehicle and Traffic Law (VTL) Summons for failing to yield to an emergency vehicle (Board Review 10).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he engages in fighting, violent, tumultuous, or threatening behavior. N.Y.S. Penal Law, Section 240.20 (1) (Board Review 08). A person is guilty of disorderly conduct only when the situation extends beyond the exchange between the immediate disputants and becomes a potential or immediate public problem. People v. Baker, 20 N.Y.3d 354 (2013) (Board Review 11).

Every operator of a motor vehicle shall exercise due care to avoid colliding with a parked, stopped, or standing authorized emergency vehicle. A vehicle is defined as every device in, upon, or by which any person may be transported upon a highway, except devices moved by human power. N.Y.S. Vehicle and Traffic Law, Article 1 Section 159, Article 26 Section 1144-a. (Board Review 09).

§ 87(2)(g)

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Investigator:	Signature	Print	Date
Squad Leader:	Title/Signature	Print	Date
Reviewer:	Title/Signature	Print	Date

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